



Federal Communications Commission  
Washington, D.C. 20554

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**DA 05-2240**  
***In Reply Refer to:***  
**1800B3-ALV**

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Re: KRFM(FM), Show Low, AZ  
Facility ID No. 33692  
File No. BALH-20050107ABT

KSNX(FM), Show Low, AZ  
Facility ID No. 17337  
File No. BALH-20050107ABU

KVWM(AM), Show Low, AZ  
Facility ID No. 17336  
File No. BAL-20050107ABV

KVSL(AM), Show Low, AZ  
Facility ID No. 33693  
File No. BAL-20050107ABW

Applications for Assignment of Licenses

Dear Counsel:

We have before us the above-captioned applications (the "Assignment Applications") proposing to assign the licenses of stations KRFM(FM), KSNX(FM), KVWM(AM), and KVSL(AM), Show Low, Arizona (collectively, the "Show Low Stations"), from FFD Holdings I, Inc. to Petracom of Holbrook, LLC ("Petracom Holbrook"). We also have before us an Informal Objection, filed February 17, 2005, by Cynthia R. Konecny ("Konecny").<sup>1</sup> For the reasons stated below, we deny the Informal Objection and grant the Assignment Applications.

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<sup>1</sup> Petracom Holbrook filed an Opposition on March 9, 2005.

## Background

In February 2004, Petracom Media, LLC and its three wholly-owned subsidiaries, Petracom of Joplin, LLC, Petracom of Texarkana, LLC, and Petracom of Show Low, LLC (collectively, with Petracom Media, LLC, the “Debtors”) filed for relief and reorganization under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Middle District of Florida (the “Court”).<sup>2</sup> On October 26, 2004, prior to approving the Debtors’ plan of reorganization (the “Chapter 11 Plan”), the Court issued an order authorizing the Debtors to cooperate with Textron Financial Corporation (“Textron”), the largest creditor in the bankruptcy proceeding, to transfer or assign the Debtors’ FCC licenses to Textron or its designee. Textron named FFD Holdings I, Inc. (“FFD”) as its designee, and on October 28, 2004, Petracom of Show Low, LLC (“Petracom Show Low”), the licensee of the Show Low Stations, filed applications seeking Commission consent to assign its FCC licenses to FFD.<sup>3</sup>

While these applications were pending before the Commission, the Debtors amended and finalized their Chapter 11 Plan and entered into a Memorandum of Understanding (“MOU”) and Asset Purchase Agreement (“APA”) with Textron and FFD, which provided that the Show Low Station licenses would be assigned to Petracom Holbrook. The Court issued an order on December 14, 2004, approving the MOU and APA, and confirming the Debtors’ Chapter 11 Plan. Subsequently, on December 20, 2004, the Commission granted the initial application to assign the Show Low Station licenses from Petracom Show Low to FFD. The assignment was consummated on January 4, 2005, and on January 7, 2005, in accordance with the Court-approved APA, FFD filed the subject applications to assign the station licenses to Petracom Holbrook.

Konecny objects to the grant of the Assignment Applications, averring that: (1) the proposed assignee has misrepresented its financial qualifications; (2) the proposed assignment may violate Section 73.1150 of the Commission’s Rules;<sup>4</sup> and (3) Petracom Holbrook has failed to establish that the proposed assignment complies with the Commission’s multiple ownership rules.

## Discussion

*Financial Qualifications.* In the Assignment Applications Petracom Holbrook certifies that it has sufficient net liquid assets on hand or available from committed sources to consummate the transaction and operate the stations for three months.<sup>5</sup> Konecny asserts that the recent bankruptcy proceeding does “not bear out this cavalier certification” and it thus “appears that the proposed Assignee has misrepresented its financial qualifications, and . . . is not in fact financially qualified . . . .”<sup>6</sup>

Petracom Holbrook states that Konecny’s allegations about financial qualifications are based on a crucial misunderstanding about the identity of the proposed assignee. Specifically, Konecny erroneously assumes that Petracom Show Low, one of the parties to the bankruptcy proceeding, is the proposed assignee. The proposed assignee, however, is Petracom Holbrook. Petracom Holbrook explains that it is

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<sup>2</sup> See Case No. 03-20980-8P1 *et al.*

<sup>3</sup> See FCC File Nos. BALH/BAL-20041028AEH-AEK. The Debtors concurrently filed separate applications to assign the FCC licenses held by Petracom of Texarkana, LLC and Petracom of Joplin, LLC to FFD.

<sup>4</sup> 47 C.F.R. § 73.1150.

<sup>5</sup> See File No. BALH-20050107ABT *et al.* at Section III, Question 10.

<sup>6</sup> Konecny Objection at 3.

a separate and distinct entity,<sup>7</sup> was never a party to the bankruptcy proceeding, and is financially qualified to consummate the transaction.

Konecny has failed to advance any specific facts suggesting that the actual proposed assignee, Petracom Holbrook, falsely certified that it is financially qualified. There is no evidence that Petracom Holbrook is insolvent. To the contrary, Petracom Holbrook confirms that the Debtors' bankruptcy filing did not adversely affect its solvency and reaffirms its ability to consummate the transaction and operate the Show Low Stations.<sup>8</sup> Moreover, Petracom Holbrook has further demonstrated its financial viability by operating its own two stations, KDJI(AM) and KZUA(FM), for over three years.<sup>9</sup> Accordingly, we find no merit to these speculative claims.<sup>10</sup>

*Section 73.1150 – Prohibited Reversionary Interest.* Konecny further avers that it is unclear whether the assignment is in violation of Section 73.1150 of the Commission's rules, which provides that a transferor of a broadcast station license may retain "no right of reversion of the license, no right to reassignment of the license in the future, and may not reserve the right to use the facilities of the station for any period whatsoever."<sup>11</sup> Konecny's claim is based on her assumption that the instant application seeks to reassign the Show Low Station licenses back to the original licensee and debtor, Petracom Show Low. As Petracom Holbrook explains, however, the Show Low Station licenses will be assigned to it, a separate and distinct entity, for the benefit of the creditors; they will not revert back to Petracom Show Low. The "somewhat convoluted course of the parties' transactions," Petracom Holbrook clarifies, was a "function of the need to comply with the Court's Order" and subsequently effectuate the Debtors' final plan of reorganization.<sup>12</sup> Section 73.1150 of the Commission's Rules, Petracom Holbrook asserts, has not been violated. We agree.

The initial assignment of the Show Low Station licenses from Petracom Show Low to FFD was not filed pursuant to any formal asset purchase agreement, but rather, pursuant to a general order of the Court. The subsequent assignment of the Show Low Station licenses from FFD to Petracom Holbrook was pursuant to the Court's approval of the Debtors' final plan of reorganization.<sup>13</sup> As noted previously,

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<sup>7</sup> Petracom Show Low is a wholly-owned subsidiary of Petracom Media, LLC. Petracom Holbrook is wholly-owned by Henry Ash. Although Petracom Show Low and Petracom Holbrook have unique ownership structures, both entities are commonly controlled by Henry Ash.

<sup>8</sup> See Petracom Holbrook Opposition, Declaration of Henry Ash (declaring, under penalty of perjury, that "Petracom Holbrook had, when the applications were filed, and continues to have sufficient net liquid assets on hand or available from committed sources to consummate the transaction and operate the stations for three months.").

<sup>9</sup> Petracom Holbrook acquired KDJI(AM) and KZUA(FM) on April 30, 2002. See BAL/BALH-20020416AAU, AAV.

<sup>10</sup> See, e.g., *F.E.M. Ray, Inc.*, 7 FCC Rcd 848 (1992) (declining to add a financial misrepresentation issue where petitioner had not shown that the bankruptcy of one of applicant's shareholders negatively affected applicant's financial qualifications); *Webster-Baker Broadcasting Co.*, 88 F.C.C.2d 944 (1982) (declining to add an issue where petitioner failed to demonstrate how bankruptcy of company largely owned by one of applicant's shareholders impacted applicant's financial qualifications).

<sup>11</sup> 47 C.F.R. § 73.1150(a).

<sup>12</sup> Petracom Holbrook Opposition at 8.

<sup>13</sup> See Court's Confirmation Order at 8, cited at Attachment B to Petracom Holbrook Opposition ("The Textron Credit Bid represents the highest and best bid for the Operating Assets, and will permit the Debtors and their estates to maximize the value of their assets for the benefit of all creditors .... The parties are authorized to consummate the transactions described at the Confirmation Hearing.").

Petracom Holbrook is a legal entity, separate and distinct from Petracom Show Low, and there is no evidence in the record that the original licensee, Petracom Show Low, retained or retains any interest at all in the stations. In fact, The Court explicitly specified that Petracom Show Low had no reversionary interest in, or right to redeem or repurchase, the stations.<sup>14</sup>

Although the two-step process by which the stations are ultimately assigned to Petracom Holbrook, is, as Petracom Holbrook acknowledges, “somewhat convoluted,” it is well-established that the Commission will accommodate court decrees unless a public interest determination under the Communications Act compels a different result.<sup>15</sup> Accommodation of the Court’s Order contravenes neither the Act nor our rules, including Section 73.1150. Accordingly, we find no reason not to honor the Court’s Order and grant the Assignment Applications.<sup>16</sup>

*Multiple Ownership Analysis.* Finally, Konecny asserts that Petracom Holbrook’s multiple ownership exhibit is defective because it does not properly depict and analyze all of the radio markets created by the proposed assignment.<sup>17</sup> The omissions, Konecny contends, preclude a determination of multiple ownership compliance. In its Opposition, Petracom Holbrook acknowledges that the narrative statement in its multiple ownership exhibit may not have highlighted all of the relevant markets, but asserts that its contour map demonstrated full compliance with the Commission’s ownership limits.

The proposed assignee, Petracom Holbrook, is currently the licensee of KDJI(AM) and KZUA(FM), Holbrook, Arizona. Neither of the stations currently licensed to Petracom Holbrook, nor any of the Show Low Stations, is in an Arbitron-rated market. Where transactions involve non-Arbitron markets, we currently apply the contour-overlap methodology, with certain modifications (the “Interim Methodology”), to determine compliance with the local radio ownership rule.<sup>18</sup> Under the Interim Methodology, the relevant radio market is defined by the area encompassed by the mutually overlapping principal community contours of the stations proposed to be commonly owned.

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<sup>14</sup> See Attachment B to Petracom Holbrook Opposition, Letter from Harley E. Riedel, Bankruptcy Counsel for the Debtors, to Harry Cole, at 2-3.

<sup>15</sup> *Arecibo Radio Corp. v. FCC*, 101 F.C.C.2d 545 (1985); *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 131-32 (1945).

<sup>16</sup> Compare *Kirk Merkley, Receiver*, 94 F.C.C.2d 829 (1983), *recon. denied*, 56 R.R.2d 413 (1984), *aff’d sub nom. Merkley v. FCC*, 776 F.2d 365 (D.C. Cir. 1985) (holding that an agreement giving a prior licensee, as a default remedy, the right to regain control automatically of the station and its license, was tantamount to a vested security interest and violated Commission policy, and thus departing from the court’s decision).

<sup>17</sup> Petracom Holbrook’s multiple ownership exhibit identified a single radio market consisting of stations KZUA(FM), KDJI(AM), and KRFM(FM). Konecny asserts that there are three distinct radio markets requiring review.

<sup>18</sup> See 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd 13620, 13729-30 (2003) (“Ownership Order”), *aff’d in part and remanded in part, Prometheus Radio Project, et al. v. F.C.C.*, 373 F.3d 372 (2004), *stay modified on rehearing*, No. 03-3388 (3d Cir. Sept. 3, 2004), *cert. denied*, 73 U.S.L.W. 3466 (U.S. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168 and 04-1177). We will continue to employ the Interim Methodology, pending the outcome of the *Notice of Proposed Rulemaking* (adopted as part of the *Ownership Order*), which seeks comment on how to establish geographic boundaries for non-rated markets. *Ownership Order*, 18 FCC Rcd at 13870-73.

We agree that Petracom Holbrook's initial narrative statement did not fully delineate the radio markets created by the proposed transaction.<sup>19</sup> Petracom Holbrook, however, has rectified the omissions in its initial narrative statement and provided a detailed analysis of multiple ownership compliance in each relevant radio market.<sup>20</sup> Moreover, staff review further confirms that the proposed transaction creates two separate radio markets and complies with the local radio ownership rule in each market.<sup>21</sup> In the first market, Petracom Holbrook would own two FM stations and one AM station (KZUA(FM), KRFM(FM), and KDJI(AM)) in an eight-station market.<sup>22</sup> In the second market, Petracom Holbrook would own two FM stations and two AM stations (KSNX(FM), KRFM(FM), KVSL(AM), and KVWM(AM)) in a nine-station market. In a local radio market with 14 or fewer stations, a single owner may own up to five commercial stations, no more than three of which are in the same service, except that the party may not own more than 50 percent of the stations in such market.<sup>23</sup> Accordingly, the proposed transaction complies with our local radio ownership limits.<sup>24</sup>

### **Conclusion**

Based on the evidence presented in the record, we find that Konecny has not raised a substantial and material question of fact warranting further inquiry. We further find that Petracom Holbrook is qualified as the assignee and that grant of the Assignment Applications is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the applications to assign the licenses of stations KRFM(FM), Show Low, Arizona (File No. BALH-20050107ABT), KSNX(FM), Show Low, Arizona (File No. BALH-20050107ABU), KVWM(AM), Show Low, Arizona (File No. BAL-20050107ABV), and KVSL(AM), Show Low, Arizona (BAL-20050107ABW) from FFD Holdings I, Inc. to Petracom of Holbrook, LLC ARE GRANTED, subject to the condition that the transaction may not be consummated prior to the grant of the pending license renewal applications for KRFM(FM),

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<sup>19</sup> For example, Petracom Holbrook did not identify the market created by the four Show Low Stations. Despite the fact that the four stations are currently owned by a single entity, we still require a showing that common ownership of the stations will continue to comply with our ownership limits.

<sup>20</sup> See Petracom Holbrook Opposition at 3-6.

<sup>21</sup> Konecny identified a third market comprised of KDJI(FM), KRFM(FM), and the construction permit for KSNX(FM) (File No. BMPH-19990520IB). The construction permit to upgrade KSNX(FM) to Class C2, however, expired on March 11, 2000. Accordingly, there is no need to analyze this hypothetical market for multiple ownership compliance.

<sup>22</sup> The total number of stations in the market is determined by counting the full power commercial and noncommercial stations whose principal community contours overlap or intersect at least one of the principal community contours of the stations proposed to be commonly owned. Under the Interim Methodology, stations whose transmitters are located more than 92 kilometers from the perimeter of the common area of principal community contour overlap are not counted as being in the relevant radio market. *Ownership Order*, 18 FCC Rcd at 13729-30.

<sup>23</sup> See 47 C.F.R. § 73.3555(a)(1)(iv).

<sup>24</sup> Konecny asserts that grant of the application would result in Petracom having unreasonable market dominance, but fails to support its general assertion with any concrete data. We find, therefore, that Konecny has failed to raise a substantial and material question of fact regarding this issue.

KSNX(FM), KVWM(AM), and KVSL(AM). IT IS FURTHER ORDERED, that the February 17, 2005, Informal Objection filed by Cynthia R. Konecny IS DENIED.

Sincerely,

Peter H. Doyle, Chief  
Audio Division  
Media Bureau